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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,469	03/29/2004	Anja Bauer	P30829	3148
7055 7590 07/30/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER JEAN-LOUIS, SAMIRA JM	
			ART UNIT 1609	PAPER NUMBER
			NOTIFICATION DATE 07/30/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/812,469

Applicant(s)

BAUER ET AL.

Examiner

Samira Jean-Louis

Art Unit

1609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claim(s) 1-15, drawn to a water-in-oil emulsion composition, classified in class 424, subclass 401.
 - II. Claim(s) 16-17, drawn to a method for moisturizing the skin comprising applying to the skin said solid water-in-oil emulsion composition, classified in class 424, subclass 401.

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as a composition and a method for moisturizing the skin with said composition. These inventions as claimed can be shown to be distinct if either or both of the following can be shown: 1) the method for moisturizing the skin with said composition as claimed can be used with any other materially different products or 2) the composition as claimed can be used in a materially different processes (See MPEP 806.05 (h)). In this particular instance, the composition claimed by applicant can be practiced with a materially different method such as to protect the skin from the sun.

Consequently, due to the reasons listed above, these inventions are distinct and a search required for Group I (i.e the composition) is not required for Group II (i.e. said method). In addition, while the searches for Group I and II may be overlapping, in

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searching Group I, the Examiner will solely base the search on the patentability of the aforementioned composition. Conversely, in searching for Group II, the Examiner will specifically focus the search on the patentability of the method of use. Accordingly, a search for both groups would pose an undue burden on the Office (see MPEP § 808.02).

Species Election

In addition, this application contains claims that are directed to more than one species of the generic inventions. Thus, once applicant has selected a specific type of invention to be examined, applicant will need to further select the specific species associated with the chosen invention. Moreover, this species election is required for both group I and group II listed above.

Thus, applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-17 are generic.

Specifically, the patentably distinct species of cosmetic composition such as **skin moisturizing agent** (as set forth in claim(s) 1) and **water-in-oil emulsifier** (as set forth in claim(s) 1-6). Applicant is required to elect a particular species (and subspecies, if disclosed, as in claim(s) 3 for a water-in-oil emulsifier), out of the aforementioned

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species. In the likely event, that applicant elects a formula (as detailed in claim 2 (i)), applicant is required to further define the "A" subgroups, the "R" subgroups as well as the "X" subgroups in order to fulfill the complete election of species requirement.

In addition, applicant is further required to disclose if additional active agents will be included in said water-in-oil emulsion composition and applicant is required to elect the additional active agents as set forth in claim(s) 8-10.

The species mentioned above are independent or distinct because the species correspond to distinct chemical compounds recognized as having a different classifications in the art, and that are thus expected to have different activities and means of operation. Accordingly, a search for all such species would pose an undue burden on the office, because it would require a massive search spanning numerous different classes and subclasses.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samira Jean-Louis whose telephone number is 571-270-3503. The examiner can normally be reached on 7:30-5 PM EST M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000. .

Ardin H. Marschel 7/24/07
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER